

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Simon Wang	Team: Squad #10	CCRB Case #: 201604976	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 06/02/2016 10:10 PM	Location of Incident: Northeast Corner of 111th Avenue and 202nd Street	Precinct: 113	18 Mo. SOL 12/2/2017	EO SOL 12/2/2017	
Date/Time CV Reported Thu, 06/09/2016 1:30 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 06/09/2016 1:30 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Joseph Algerio	07322	944312	113 PCT
2. POM Matthew Lewis	25652	941054	113 PCT
3. SGT Brendan Boyle	5017	934526	113 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Brendan Boyle	Abuse: Sergeant Brendan Boyle stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Joseph Algerio	Abuse: Police Officer Joseph Algerio searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
C.POM Matthew Lewis	Abuse: Police Officer Matthew Lewis searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
D.POM Joseph Algerio	Abuse: Police Officer Joseph Algerio refused to provide his name and shield number to § 87(2)(b)	

Case Summary

On June 9, 2016, § 87(2)(b) filed the following complaint by phone with the CCRB. On June 2, 2016, at approximately 10:10 p.m., § 87(2)(b) was driving with his brother § 87(2)(b) and his cousin § 87(2)(b) in § 87(2)(b)'s vehicle. They had driven from § 87(2)(b)'s home in Virginia and were going to § 87(2)(b)'s home in Queens, New York when they were pulled over at the corner of 111th Avenue and 202nd Street in Queens by Sgt. Brendan Boyle, PO Joseph Algerio and PO Matthew Lewis of the 113th Precinct (**Allegation A**). § 87(2)(b) was arrested for an open warrant. Upon opening the driver's door, PO Algerio observed and recovered a gravity knife from inside the vehicle (**Allegation B**). § 87(2)(b) and § 87(2)(b) were placed under arrest for § 87(2)(b). Upon opening the passenger side door, several Xanax pills were recovered from the vehicle (**Allegation C**). § 87(2)(b) allegedly asked PO Algerio for his name and his badge number, and PO Algerio did not respond (**Allegation D**). § 87(2)(b) and § 87(2)(b) were all arrested for § 87(2)(b). The vehicle, which belonged to § 87(2)(b) was transported to the 113th Precinct stationhouse by police officers for safekeeping and then released to § 87(2)(b) upon his release.

There was no video of this incident.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation due to the arrests of § 87(2)(b) and § 87(2)(b)
- As of August 31, 2016, an enquiry to the Office of the New York City Comptroller revealed no notices of claim filed regarding this incident (**Board Review 1**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)

§ 87(2)(b)

- § 87(2)(b)
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- § 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) or § 87(2)(b) (**Board Review 5, 6, 7**).
- This is the first and only complaint filed against Sgt. Boyle in his 12 year tenure at the NYPD (**Board Review 8**).
- PO Algerio has had five previous complaints, involving seven allegations made against him in his 9 year tenure at the NYPD. None of the allegations have been substantiated against him, § 87(2)(g). Additionally, there is one CCRB complaint (case number 201607480) currently under investigation in which one allegation of force is pleaded against PO Algerio (**Board Review 9**).
- PO Lewis has had 22 other complaints, involving 60 allegations filed against him in his 10 year tenure at the NYPD (**Board Review 10**). § 87(2)(g)
 - In CCRB case number 201202903, allegations of vehicle stop, vehicle search, frisk, and search of person were substantiated against PO Lewis. The board recommended charges against PO Lewis. The final disciplinary disposition is unknown.
 - In CCRB case number 201401420, allegations of physical force, threat of force and discourtesy were substantiated against PO Lewis. The board recommended charges against PO Lewis. The final disciplinary disposition is unknown.

Findings and Recommendations

Explanation of Subject Officer Identification

- § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b). PO Algerio admitted to recovering the knife and the Xanax pills from the vehicle, so an allegation of vehicle search is pleaded against him. § 87(2)(b) identified PO Lewis as also conducting a search of the vehicle, so an allegation is also pleaded against him. § 87(2)(b) alleged that he requested PO Algerio's name and shield number, identifying him as the officer who removed him from the vehicle and handcuffed him. § 87(2)(g)
§ 87(2)(b)

Civilian not Interviewed

Despite repeated requests, neither § 87(2)(b) nor § 87(2)(b) provided a phone number for § 87(2)(b) who is a resident of Virginia. Three contact letters were sent to § 87(2)(b)'s address in Virginia. None of the letters sent to § 87(2)(b) have been returned undelivered by the US Postal Service. Searches of Lexis-Nexis, CLEAR and other databases yielded no additional contact information. The undersigned further requested that § 87(2)(b) convey a message to his cousin § 87(2)(b) asking him to contact the CCRB. Despite

these contact attempts by mail and through § 87(2)(b) there was no contact forthcoming by § 87(2)(b) and he could not be contacted for this investigation.

Allegation A – Abuse of Authority: Sergeant Brendan Boyle stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

The reasons for the stop of § 87(2)(b)'s vehicle is not in dispute. § 87(2)(b) and § 87(2)(b) both stated that when the officers were queried on the reason for the vehicle stop, that PO Algerio informed them that the vehicle had illegal tinted windows and also mentioned that the vehicle resembled a vehicle involved in a shooting. Sgt. Boyle, PO Algerio and PO Lewis all stated that § 87(2)(b)'s vehicle, which was being driven by § 87(2)(b) had very dark tinted windows on the four side windows and the rear window. They also all stated that the window tints gave them probable cause to believe the vehicle was in violation of VTL 375. A subsequent light meter test determined that the glass had a light transmittance of 41%, and § 87(2)(b)'s arrest included a charge for violation of VTL 375 (**Board Review 11**). Sgt. Boyle, PO Algerio and PO Lewis further stated that § 87(2)(b)'s vehicle resembled the description provided of a vehicle involved in a shooting in the vicinity on the night of June 1 to June 2, 2016.

According to NY Vehicle and Traffic Law 375-2 (b): “No person shall operate any motor vehicle upon any public highway, road or street: (1) the front windshield of which is composed of, covered by or treated with any material which has a light transmittance of less than seventy percent”(Board Review 12)

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Allegation B – Abuse of Authority: Police Officer Joseph Algerio searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation C – Abuse of Authority: Police Officer Matthew Lewis searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(b) was the driver of § 87(2)(b)'s vehicle. § 87(2)(b) was seated in the front passenger seat, and § 87(2)(b) was seated in the back seat of the vehicle. After obtaining § 87(2)(b)'s identification, PO Algerio ran a check for warrants and discovered that § 87(2)(b) had an outstanding bench warrant and decided to place him under arrest. § 87(2)(b) stated that after he was asked to exit the vehicle, he was directed to stand at the rear of the vehicle while PO Algerio went to the front of the vehicle where the front driver-side door was still open. § 87(2)(b) did not see what PO Algerio did, but stated that PO Algerio approached him shortly afterward and claimed that he found a gravity knife from a pocket in the front driver door. § 87(2)(b) stated that he saw PO Lewis search in the front driver door pocket and recover a gravity knife from the door. § 87(2)(b) claimed that he had no knowledge of the knife, and § 87(2)(b) stated that the knife belonged to § 87(2)(b)

PO Algerio stated that he observed a knife in the driver-side door map pocket which was in plain view when the door was opened. Upon seeing the knife, PO Algerio believed that the knife was a gravity knife based on his training. Upon removing the knife from the door pocket and examining it, PO Algerio's suspicions were confirmed. A black gravity knife was vouchered as arrest evidence (**Board Review 13**).

§ 87(2)(b) and § 87(2)(b) both stated that § 87(2)(b) told the officers that the knife belonged to him. At that point, it was determined that § 87(2)(b) who was seated in the front passenger seat, would be placed under arrest for § 87(2)(b). When the front passenger door was opened in order for § 87(2)(b) to be placed under arrest, PO Algerio saw five marked Xanax pills in plain view in the interior passenger side door handle. The pills were labeled “Xanax.” Five Xanax pills were vouchered as arrest evidence (**Board Review 14**).

§ 87(2)(b) and § 87(2)(b) both denied any knowledge of the existence of the pills and stated they did not ever see the pills. § 87(2)(b) and § 87(2)(b) were all arrested and charged with § 87(2)(b).
§ 87(2)(b) (Board Review 15, 16).

§ 87(2)(b) alleged that after he was arrested, PO Lewis searched inside the vehicle by opening and entering all four doors, however, he did not see what PO Lewis did inside the vehicle. § 87(2)(b) made no mention of PO Lewis searching the vehicle, though he stated he was ordered to stand with his back to the vehicle and could not see everything the officers were doing with the vehicle.

In *People v. Diaz*, 81 N.Y.2d 106, (1993), the court stated, “Under the plain view doctrine, if the sight of an object gives the police probable cause to believe that it is the instrumentality of a crime, the object may be seized without a warrant if three conditions are met: (1) the police are lawfully in the position from which the object is viewed; (2) the police have lawful access to the object and (3) the object’s incriminating nature is immediately apparent.” **(Board Review 17)**

§ 87(2)(g)

Allegation D – Abuse of Authority: Police Officer Joseph Algerio refused to provide his name and shield number to § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) claimed that as PO Algerio handcuffed him, he asked PO Algerio, “What’s your name? I need your badge number and your name.” PO Algerio allegedly did not say anything in response. § 87(2)(b) did not recall whether § 87(2)(b) made such a request. PO Algerio, Sgt. Boyle and PO Lewis all denied hearing § 87(2)(b) ask for any officer’s name or shield number. They also all claimed that such information would have been willingly provided by any officer upon request.

§ 87(2)(g)

Squad: 10

Investigator:	_____	<u>Simon Wang</u>	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date